

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R082-26

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EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§ 1-20, 22-25 and 29-33, NRS 360.090 and 370.510; § 21, NRS 360.090, 370.501, 370.510 and 370.515; §§ 26-28 and 34, NRS 370.510, 370.597 and 370.675; § 35, NRS 370.510.

A REGULATION relating to taxation; creating provisions governing certain contested cases relating to holders of licenses relating to cigarettes or other tobacco products and manufacturers of tobacco products; eliminating procedures for refunding precollected cigarette and other tobacco product taxes to Indian tribes; revising provisions governing administrative proceedings for the suspension or revocation of licenses relating to cigarettes or other tobacco products and the removal of manufacturers of cigarettes and brand families from the directory of manufacturers and brand families maintained by the Department of Taxation; eliminating certain definitions and other provisions relating to cigarettes and other tobacco products; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the members of the Nevada Tax Commission to prescribe regulations for carrying on the business of the Commission and the Department of Taxation. (NRS 360.090) Existing regulations set forth various provisions governing the practice and procedure in contested cases before the Commission and the Department. (NAC 360.043-360.200) **Section 4** of this regulation provides that, notwithstanding those provisions, each hearing of a contested case heard by the Commission and the Department relating to disciplinary proceedings, disputes or claims of ownership in certain property transmitted to or seized by the Department and appeals of civil penalties under existing law relating to tobacco licensees and manufacturers will be conducted in accordance with the provisions of the Nevada Administrative Procedure Act and regulations relating to contested cases involving tobacco licensees and manufacturers. **Sections 4-19** of this regulation set forth various provisions governing contested cases relating to tobacco licensees and manufacturers. **Sections 5 and 7** establish requirements governing pleadings and acknowledgments of service for certain documents, respectively. **Sections 6, 12 and 13** set forth evidentiary procedures in such proceedings. **Section 8** establishes requirements governing transcripts of proceedings, including, without limitation, stating the party responsible for furnishing a certified court reporter and bearing associated costs. **Section 9** sets forth requirements governing ethical and courteous conduct during a proceeding. **Section 10**

authorizes a hearing officer to hold a prehearing conference. **Section 11:** (1) authorizes a hearing officer to issue a subpoena subject to certain restrictions; and (2) provides certain requirements that must be satisfied to obtain the subpoena. **Section 14** requires a hearing officer assigned by the Commission to conduct an evidentiary hearing in any appeal to the Commission in which certain parties have not received an evidentiary hearing. **Section 15:** (1) authorizes certain parties to request a closed hearing; and (2) sets forth requirements for making such a request. **Section 16** sets forth provisions governing the rehearing or reconsideration of a matter.

Sections 17 and 18 set forth the procedure for disputing or claiming an ownership interest in property transmitted to or seized by the Department under provisions of existing law requiring the seizure and disposition of certain counterfeit, contraband or unlawfully used property relating to tobacco. **Section 17** additionally sets forth the consequences for failure to file a dispute or claim within the prescribed period of time. **Section 19** sets forth the procedure for a tobacco licensee or manufacturer to appeal a civil penalty issued by the Department. **Sections 2 and 3** of this regulation create certain definitions that apply the provisions of **sections 4-19** to various tobacco licensees, including, without limitation, licensees authorized to engage in the remote retail sale of a cigar or pipe tobacco. **Section 23** of this regulation applies certain definitions to **sections 2-19**.

Existing law imposes a tax on cigarettes and other tobacco products. (Chapter 370 of NRS) Existing law and regulations authorize a refund for the taxes paid on cigarettes or other tobacco products for cigarettes or other tobacco products that are sold to: (1) any person if sold and delivered on an Indian reservation or colony where an excise tax has been imposed that is equal to or greater than the rate of tax imposed pursuant to provisions of existing law; or (2) an Indian if sold and delivered on an Indian reservation or colony where no excise tax has been imposed or the excise tax is less than the rate of the tax imposed pursuant to provisions of existing law. (NRS 370.280, 370.503; NAC 370.230) Existing law prohibits the Department from collecting the tax on cigarettes and other tobacco products sold on an Indian reservation or Indian colony if the governing body of the reservation or colony imposes an excise tax on cigarettes and other tobacco products that is equal to or greater than the tax imposed by provisions of existing law and the governing body submits a copy of the ordinance imposing the tax to the Department. (NRS 370.515) **Sections 22 and 35** of this regulation eliminate provisions which set forth procedures for an Indian tribe to apply for and receive a refund from the Department of the tax on cigarettes and other tobacco products.

Existing law provides for the licensing by the Department of persons engaged in the manufacture, distribution and sale of cigarettes and other tobacco products, including persons who operate a warehouse or distribution center or who conduct business as a manufacturer, a wholesale dealer of cigarettes, a wholesale dealer of other tobacco products, a tobacco retail dealer, a cigarette vending machine operator or a logistics company. (NRS 370.531-370.597) Existing law authorizes the Department to suspend or revoke such licenses and requires the Department to adopt regulations establishing a procedure for the suspension and revocation of a license. (NRS 370.595, 370.597) Existing law also requires the Department to maintain a directory of manufacturers of tobacco products who have made current and accurate certifications to the Department concerning the manufacturer and its brand families. Existing law further requires the Department to update the directory and to remove from the directory any manufacturer and its brand families that do not conform to the requirements for listing in the directory. (NRS 370.675)

Existing regulations establish procedures for the suspension and revocation of the license of a retail dealer or wholesale dealer and the removal of a manufacturer of tobacco products and its brand families from the directory. (NAC 370.500-370.595) **Section 24** of this regulation applies the procedures for the suspension or revocation of the license of a retail dealer or wholesale dealer to the suspension or revocation of any of the licenses issued pursuant to provisions of existing law relating to licenses and taxes on cigarettes or other tobacco products. **Sections 26-29, 31 and 34** of this regulation revise the timeline for such procedures by changing: (1) the amount of time licensees and manufacturers have to demonstrate compliance with the law after the Department issues a notice of intent to suspend or revoke a license or remove a manufacturer and its brand families from the directory, as applicable; (2) when a notice of hearing must be served relative to the date of the hearing; (3) the deadline for a respondent to submit supporting documents before the hearing; (4) the deadline for serving any motion not made at the hearing; (5) the deadline for a hearing officer to issue a decision and for a party to appeal that decision; and (6) when a final order suspending or revoking a license of a wholesale dealer of cigarettes or a wholesale dealer of other tobacco products becomes effective and the amount of time a wholesale dealer has to notify the tobacco retail dealers and manufacturers with whom the wholesale dealer does business of the suspension or revocation of such a license.

Existing regulations prescribe the order of proceedings for a hearing conducted to suspend or revoke the license of a licensee or to remove a manufacturer of tobacco products and its brand families from the directory. (NAC 370.580) **Section 31** provides that evidence at the hearing may be received in any manner ordered by the hearing officer, but that a hearing will ordinarily proceed in the prescribed order. **Section 30** of this regulation authorizes a hearing officer to: (1) order the parties to file briefs after the hearing; and (2) consider a request by the parties to file briefs before or after the hearing.

Existing regulations authorize a party to file a notice of appeal with the Commission within 20 business days after service of a decision issued by a hearing officer regarding the suspension or revocation of a license or the removal of a manufacturer of tobacco products and its brand families from the directory. Existing regulations authorize an opposing party to file a response to the notice of appeal. (NAC 370.585) Existing regulations provide that, in hearing such an appeal, the Commission will consider only evidence which was submitted to the hearing officer and identified in the notice of appeal or response to the notice of appeal. (NAC 370.590) **Section 32** of this regulation requires a notice of appeal, if any, to be filed with the Department within 30 days after service of the decision of the hearing officer and revises the information which is required to be included in a notice of appeal. **Section 32** requires an appellant to file, within 30 days after filing the notice of appeal, an opening brief which includes certain information previously required to be included in the notice of appeal. **Sections 32 and 33** of this regulation make conforming changes to provide that an opposing party may respond, in the form of an answering brief, to issues raised in the opening brief of the appellant rather than the notice of appeal. **Section 33** provides that the Commission will consider only evidence which was identified in the opening brief or answering brief. **Section 33** increases the amount of time each party has for oral argument before the Commission.

Section 25 of this regulation revises the definition of the term “respondent” to specifically refer to a licensee or manufacturer of tobacco products to whom the Department has issued a certain notice of hearing.

Sections 20-22 of this regulation replace references to “other products made from tobacco” with the term “other tobacco products” to conform with the terminology used in provisions of existing law. (NRS 370.0318)

Section 1. Chapter 370 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *“License” means a license issued pursuant to:*

- 1. NRS 370.5033 that authorizes the holder to engage in business as a remote seller; or*
- 2. NRS 370.531 to 370.597, inclusive, that authorizes the holder to conduct business as a manufacturer, a wholesale dealer or a tobacco retail dealer.*

Sec. 3. *“Licensee” means the holder of a license.*

Sec. 4. *1. Notwithstanding the provisions of NAC 360.043, the provisions of chapter 233B of NRS and NAC 370.500 to 370.595, inclusive, and sections 2 to 19, inclusive, of this regulation:*

(a) Govern the practice and procedure in contested cases before the Commission and the Department under chapter 370 of NRS for disciplinary proceedings, disputes or claims of ownership in property transmitted to or seized by the Department pursuant to NRS 370.415 and appeals of civil penalties.

(b) Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the Commission or the Department.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.

Sec. 5. *All pleadings, including, without limitation, complaints, petitions, answers, briefs, motions and affidavits, should be addressed to the Executive Director and not to individual*

members of the Commission or its staff. All pleadings are deemed to be officially received by the Department when:

- 1. A true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail;*
- 2. An electronic copy of a paper or document is submitted through the online portal maintained by the Department under the account of the licensee or manufacturer; or*
- 3. An electronic copy of a paper or document is submitted by electronic mail at the direction of the hearing officer.*

Sec. 6. Oral evidence will be taken only upon oath or affirmation administered by the hearing officer, the Executive Director or a commissioner. Before taking the witness stand, each person must swear, or affirm, that the testimony the person is about to give will be the truth, the whole truth and nothing but the truth.

Sec. 7. 1. Any document required to be filed with the hearing officer, Executive Director or Commission pursuant to sections 2 to 19, inclusive, of this regulation must be served on the opposing party:

- (a) In person or by registered or certified mail; or*
- (b) By electronic mail or other electronic means if the opposing party elects to receive service in such a manner.*

2. With all documents required to be served, an acknowledgment of service or a certificate in substantially the following form must be included:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by

mailing a copy thereof, properly addressed, with postage prepaid, to) (by
*electronically mailing a copy thereof, properly addressed, to the electronic mail address
ascribed to*)

Dated at, this(day) of(month) of(year)

.....

Signature

Sec. 8. 1. *If a transcript of any hearing held before a hearing officer or the
Commission is desired by a licensee or manufacturer, the licensee or manufacturer must:*

- (a) Furnish the court reporter, who must be certified pursuant to chapter 656 of NRS to
provide the service of court reporting;*
- (b) Bear all costs associated with transcription; and*
- (c) Deliver, free of charge, a copy of the transcript to the Executive Director within 20 days
after preparation of the transcript.*

2. *If the licensee or manufacturer wishes to use, in a subsequent hearing or appeal, a
transcript which has been prepared from an audio recording provided by the Department of
any hearing held before a hearing officer or the Commission, the licensee or manufacturer
must:*

- (a) Retain a court reporter who is certified pursuant to chapter 656 of NRS to perform the
transcription; and*
- (b) Deliver, free of charge, a copy of the transcript to the Department within the period of
time set forth in subsection 1.*

Sec. 9. 1. A person appearing in a proceeding shall conform to the recognized standards of ethical and courteous conduct, as determined by the hearing officer or the Commission. All parties to the hearing, counsel for the parties and any spectators shall conduct themselves in a respectful manner during the proceeding.

2. The hearing officer or the Commission may take any action it determines is necessary to maintain order during a hearing, including, without limitation:

(a) Excluding a party, an attorney for a party or an authorized representative of a party from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

Sec. 10. 1. The hearing officer may, upon the hearing officer's own motion or the motion of a party, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact or documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, establishing or reviewing any procedure for the hearing and taking any other action which may promote the orderly conduct of or expedite the proceedings or the disposition or settlement thereof.

2. The action taken at a prehearing conference and the agreements, admissions or stipulations made by the parties concerned must be made a part of the record. The action will control the course of subsequent proceedings, unless otherwise stipulated to by all the parties of record with the consent of the hearing officer.

3. In any proceeding, the hearing officer may, in the hearing officer's discretion, call all of the parties together for a conference before the taking of testimony. The hearing officer shall state on the record the results of the conference.

Sec. 11. *1. Subject to the restrictions imposed by NRS 360.240, a subpoena requiring the attendance of a witness from any place in the State to any designated place of a hearing for the purpose of taking testimony may be issued by the hearing officer.*

2. A party desiring a subpoena must submit an application in writing to the hearing officer stating the reasons why a subpoena is requested.

3. An application to compel the attendance of a witness at a hearing for the purpose of taking the oral testimony of the witness must identify whether or not the witness is a nonparty witness.

4. An application for a subpoena duces tecum for the production of books, waybills, papers, accounts or other documents must contain a complete and specific description of the documents or other tangible things desired.

5. An application for a subpoena must be accompanied by a proposed subpoena, on a form prescribed by the Department, which contains:

(a) The name and license number of the licensee or manufacturer;

(b) The name of the person to whom the subpoena will be directed and whether such a person is a party to the hearing;

(c) The address for service of the subpoena;

(d) The date, time and place of the hearing; and

(e) The name and signature of the requesting party or the attorney for the requesting party.

6. The hearing officer, upon receipt of an application for a subpoena, shall:

(a) Grant the application and issue the subpoena;

(b) Deny the application; or

(c) Schedule a hearing to decide whether to grant or deny the application.

7. A subpoena must be served by the requesting party at least 10 days before the hearing.

A subpoena will be issued during the hearing or upon less than 10 days' notice only upon order of the hearing officer for reasonable cause shown by the requesting party. A subpoena duces tecum must be served on the opposing party not less than 7 days before service on the person to whom the subpoena is directed.

8. The requesting party must arrange for service of the subpoena. All costs incident to the subpoena must be paid by the requesting party.

Sec. 12. *1. A hearing will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.*

2. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence, but it is not sufficient to support findings of fact unless it would be admissible over objection in civil actions.

3. The rules of privilege will be applied as they are applied in civil actions.

4. Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil trials, with the exception of hearsay evidence as above provided.

5. The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, even though the evidence would otherwise be subject to objection.

6. *The affidavit of any person may be admitted in evidence if all the parties stipulate and consent to its admission.*

Sec. 13. *The hearing officer may take official notice of the following matters when properly introduced into the record and the opposing party has had an opportunity to examine the matter and present rebuttal evidence:*

1. *Rules, regulations, official reports, decisions and orders of the Commission and any regulatory agency of the State.*

2. *Contents of decisions, orders, certificates, permits and licenses, other than certificates issued pursuant to chapter 361 of NRS, issued by the Department and the Commission pursuant to title 32 of NRS.*

3. *Matters of common knowledge and technical or scientific facts of established character.*

4. *Matters which may be judicially noticed by the courts of this State.*

Sec. 14. 1. *In any appeal to the Commission in which a licensee or manufacturer has not received an evidentiary hearing before a hearing officer, a hearing officer assigned by the Commission shall conduct an evidentiary hearing in the manner prescribed in this chapter for administrative hearings.*

2. *Not later than 30 days after the close of the evidentiary hearing, the hearing officer shall file with the Commission a proposed order, including the findings of fact, conclusions of law and decision. The proposed order must be served on each party.*

3. *Not later than 30 days after service of the proposed order, the party may file a written objection to the proposed order with the Department. The written objection must state with particularity the issues presented, the points of law or fact which are relied on and the relief*

requested. A party who files a written objection shall serve a copy of its objection on all parties.

4. A party may reply to the written objection within 30 days after service of the written objection. A reply must be served on all parties.

5. If no party files a written objection with the Department pursuant to subsection 4, the Commission will place the proposed order on the appropriate agenda for its next scheduled meeting for action by the Commission.

6. If a party files a written objection pursuant to subsection 4 within 30 days after service of the proposed order, the Commission will hold a hearing on the proposed order pursuant to NAC 370.590.

Sec. 15. *1. A licensee or manufacturer may request a closed hearing by submitting the request in writing to the Commission:*

(a) Not later than 14 days before the date of the hearing; or

(b) If authorized by the Executive Director for good cause shown, not later than 5 days before the date of the hearing.

2. A request for a closed hearing must include:

(a) A list or summary of the information the licensee or manufacturer alleges to be proprietary or confidential information, which may include bank records, financial statements, customer lists, vendor lists, trade secrets and unique business practices of the licensee or manufacturer and any other information the licensee or manufacturer considers to be proprietary or confidential information; and

(b) A short statement explaining how the information alleged by the licensee or manufacturer to be proprietary or confidential information qualifies as such pursuant to this section.

3. If the Commission receives a request for a closed hearing in accordance with the provisions of this section, the Commission will:

(a) Indicate on its written agenda that the licensee or manufacturer has requested a closed hearing; and

(b) Hold and protect the information included in the request and any information included in any briefs filed in the pertinent appeal, including any supporting materials and exhibits, in accordance with any applicable laws pertaining to the confidentiality of that information.

4. If a licensee or manufacturer submits a request for a closed hearing pursuant to:

(a) Paragraph (a) of subsection 1, the Department may, not later than 5 days before the date of the hearing; or

(b) Paragraph (b) of subsection 1, the Department may, not later than 3 days before the date of the hearing,

↪ file a written objection to the request with the Department and serve a copy of the objection upon the licensee or manufacturer or the authorized representative of the licensee or manufacturer.

5. In a closed hearing, the Commission:

(a) May receive testimony from the licensee or manufacturer and other witnesses regarding the information the licensee or manufacturer alleges to be proprietary or confidential information; and

(b) Must determine by a majority vote of a quorum of its members whether that information qualifies as proprietary or confidential information. If the Commission determines that any of that information qualifies as proprietary or confidential information, the Commission may continue to hold a closed hearing regarding that proprietary or confidential information until the Commission determines that the proprietary or confidential information has been adequately discussed within the context of the appeal.

6. A licensee or manufacturer who fails to submit a request for a closed hearing in accordance with the provisions of this section shall be deemed to have waived the right to request a closed hearing. The provisions of this section do not affect the right of a licensee or manufacturer or the agent of the licensee or manufacturer to request a continuance of any hearing on an appeal by the licensee or manufacturer.

7. As used in this section:

(a) "Closed hearing" means a hearing before the Commission which is closed to the public pursuant to this section.

(b) "Confidential economic information":

(1) Means any information which is not available to the public generally, which confers an economic benefit on the holder of the information as a result of its unavailability and which is the subject of reasonable efforts by the taxpayer to maintain its secrecy.

(2) Includes, without limitation, information relating to the amount or source of any income, profits, losses or expenditures of the taxpayer, such as data relating to costs, prices or customers.

(c) "Proprietary or confidential information":

(1) Means:

(I) Any trade secret, confidential economic information or business information that is submitted to the Commission by the licensee or manufacturer and is determined to be proprietary or confidential information by the Commission; or

(II) Any information that a specific statute declares to be confidential or prohibits the Commission from making public.

(2) Does not include any information that has been published for public distribution or is otherwise generally available to the public or in the public domain.

Sec. 16. 1. *The Commission may issue an order granting a rehearing or reconsideration of all or part of any matter on its own motion or on a petition by an aggrieved party. A motion or petition for rehearing or reconsideration will not be granted if the motion is made or the petition is filed more than 15 days after service of the final decision of the Commission on the matter or if a petition on the matter has been filed in the district court. The Commission will serve an order granting or denying a rehearing or reconsideration on all parties of record at least 5 days before the expiration of the time for filing a petition for judicial review pursuant to NRS 233B.130. The right of a person to file a petition in the district court is not affected by the person's failure to have petitioned for the Commission's rehearing or reconsideration.*

2. No oral argument concerning a motion or petition for rehearing or reconsideration will be permitted.

3. Except as otherwise provided in subsection 4, if the Commission has not taken action on a motion or petition for rehearing or reconsideration within the 15-day period allowed for making such a motion or filing such a petition, the motion or petition shall be deemed denied.

4. If a motion or petition for rehearing or reconsideration is made or filed within the 15-day period, but the Commission is not scheduled to meet within that period, the Executive Director may, upon a showing of good cause, stay enforcement of the Commission's original decision until the Commission can grant or deny the motion or petition.

5. A stay of enforcement may be ordered upon the condition that the petitioner comply with specific terms which are reasonably related to the original findings and decision.

6. If the Commission issues an order granting a rehearing or reconsideration, the subsequent decision by the Commission:

(a) Will be based on all pertinent parts of the record and such additional evidence and argument as it may permit.

(b) Is the final decision of the Commission for the purposes of judicial review.

Sec. 17. *1. To dispute or claim an ownership interest in property transmitted to or seized by the Department pursuant to NRS 370.415, a person must file a written dispute or claim with the Department within 20 days after the property is transmitted to or seized by the Department.*

2. A written dispute or claim filed pursuant to subsection 1 must be executed under oath by the person making the dispute or claim and must contain:

(a) The name of the person making the dispute or claim;

(b) If the person making the dispute or claim is not a licensee, an address in this State where the person may be served by mail or, if the person consents to receive service by electronic means, a valid electronic mail address where the person may be served by electronic mail;

(c) A description of the property that is the subject of the dispute or claim;

(d) A description of the person's interest in the property; and

(e) A statement that sets forth the facts and law upon which the dispute or claim is based.

↪ The person may attach to the written dispute or claim any documents that support the dispute or claim.

3. If a dispute or claim is filed pursuant to this section, the Department shall not sell, destroy or dispose of the transmitted or seized property pursuant to NRS 370.415 until a decision on the dispute or claim becomes final.

4. If a person fails to file a dispute or claim within the period of time set forth in subsection 1, the person is deemed to have:

(a) Waived any right to challenge the transmission, seizure or disposition of the property; and

(b) Forfeited any interest in the property.

Sec. 18. *1. Except as otherwise provided in this subsection, within 20 days after the Department receives a dispute or claim filed pursuant to section 17 of this regulation, a hearing officer shall conduct an administrative hearing regarding the dispute or claim. The hearing officer may continue such a hearing for good cause shown.*

2. Notice of an administrative hearing conducted pursuant to this section must be sent by electronic mail or, if the recipient has opted out of receiving notices through electronic means, by mail at least 10 days before the date of the hearing to the person who submitted the dispute or claim.

3. The notice of a hearing must specify:

(a) The purpose of the hearing; and

(b) The date, time and location of the hearing.

4. A person who files a dispute or claim pursuant to section 17 of this regulation has the burden of proof at the hearing held pursuant to this section. The hearing officer shall determine the order and manner in which evidence will be received at the hearing.

5. After a hearing held pursuant to this section, the hearing officer shall prepare written findings of fact, conclusions of law and a decision on the issues presented at the hearing. The hearing officer shall serve a copy of the findings of fact, conclusions of law and decision upon the person who filed the dispute or claim and the Department within 20 days after the date of the hearing.

6. A decision issued by a hearing officer pursuant to this section becomes final 30 days after the date of service of the decision unless a party files a timely notice of appeal pursuant to NAC 370.585.

Sec. 19. *1. To appeal a civil penalty issued by the Department pursuant to chapter 370 of NRS, a licensee or manufacturer must file with the Department a written notice of appeal within 30 days after service of the notice of a civil penalty.*

2. A written notice of appeal must be filed with the Department and must identify the civil penalty from which the licensee or manufacturer appeals, the date on which the civil penalty was issued and the basis for the appeal. The licensee or manufacturer may attach to the written appeal any documents that support the appeal.

3. An appeal filed pursuant to this section is an appeal to the Commission which has not received an evidentiary hearing and will first be heard by a hearing officer pursuant to section 12 of this regulation.

Sec. 20. NAC 370.010 is hereby amended to read as follows:

370.010 As used in this chapter, unless the context otherwise requires:

1. “Commission” means the Nevada Tax Commission.
2. “Department” means the Department of Taxation.
3. *“Other tobacco product” has the meaning ascribed to it in NRS 370.440.*

Sec. 21. NAC 370.210 is hereby amended to read as follows:

370.210 1. A tribe that is located and sells and delivers cigarettes or other *tobacco* products ~~made from tobacco~~ on an Indian reservation or colony whose governing body has imposed and is enforcing an excise tax on the products being sold at a rate which is equal to or greater than the rate of the tax imposed by the State on the same products shall furnish the Department a copy of the tribal ordinance which imposes the tribal tax.

2. The tribal tax must be applicable to at least all consumers who would otherwise be taxed under NRS ~~370.001~~ *370.007* to 370.430, inclusive, and be actually collected whether or not the retail establishment from which the cigarettes or other *tobacco* products ~~made from tobacco~~ are sold is owned by the tribe.

3. The Department will presume that the tax is being imposed and actually enforced by the tribe if the retail price of the cigarettes or other *tobacco* products ~~made from tobacco~~ exceeds the wholesale price charged to the tribe by an amount which is at least equal to the tax.

4. Except as otherwise provided in NRS 370.240 and 370.255, the tribe is not required to maintain any records of cigarettes received, sold or distributed by the tribe on that reservation or colony.

Sec. 22. NAC 370.220 is hereby amended to read as follows:

370.220 ~~H~~ Retail dealers who are located and sell and deliver cigarettes on an Indian reservation or colony shall purchase all of the cigarettes or other *tobacco* products ~~made from~~

~~tobacco~~ that are to be sold and delivered on the reservation or colony from a licensed wholesale dealer. ~~[who has precollected the state tax on the cigarettes and other products.~~

~~—2. If a tribal tax has been imposed on the cigarettes and other products made from tobacco, the tribe may apply for a refund of the precollected tax pursuant to NRS 370.280 or 370.503 and NAC 370.230.]~~

Sec. 23. NAC 370.500 is hereby amended to read as follows:

370.500 As used in NAC 370.500 to 370.595, inclusive, *and sections 2 to 19, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 370.510 to 370.525, inclusive, *and sections 2 and 3 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 24. NAC 370.515 is hereby amended to read as follows:

370.515 “Hearing officer” means an administrative law judge appointed by the Commission *to hear a case* pursuant to ~~[subsection 4 of NAC 370.545.]~~ *NAC 370.500 to 370.595, inclusive, and sections 2 to 19, inclusive, of this regulation.*

Sec. 25. NAC 370.525 is hereby amended to read as follows:

370.525 “Respondent” means a licensee or manufacturer of tobacco products to whom the Department has issued a notice of hearing *concerning the suspension or revocation of a license or the removal of a manufacturer and its brand families from the directory* pursuant to NAC 370.545.

Sec. 26. NAC 370.540 is hereby amended to read as follows:

370.540 1. When the Department has cause to believe that:

(a) ~~[The]~~ *A* license ~~[of a retail dealer or wholesale dealer]~~ should be temporarily suspended or permanently revoked; or

(b) A manufacturer of tobacco products and its brand families should be removed from the directory,

↳ the Department may issue a notice of intent to suspend or revoke the license or a notice of intent to remove the manufacturer and its brand families from the directory, as applicable.

2. A notice issued pursuant to subsection 1 must include:

(a) A statement of the legal authority for the suspension or revocation of the license or removal of the manufacturer and its brand families from the directory, as applicable;

(b) A statement of the facts which support the belief of the Department that the license should be suspended or revoked or that the manufacturer and its brand families should be removed from the directory, as applicable; and

(c) Except as otherwise provided in subsection 6, if the notice issued is:

(1) A notice of intent to suspend or revoke a license, a statement that the Department may issue a notice of hearing pursuant to NAC 370.545 if the licensee does not, within 10 ~~business~~ days after receipt of the notice issued pursuant to subsection 1, demonstrate to the satisfaction of the Department that the licensee is in full compliance with all lawful requirements for retention of the license; or

(2) A notice of intent to remove a manufacturer and its brand families from the directory, a statement that the Department may issue a notice of hearing pursuant to NAC 370.545 if the manufacturer does not, within 10 ~~business~~ days after receipt of the notice issued pursuant to subsection 1, demonstrate to the satisfaction of the Department that the manufacturer is in compliance with all applicable legal requirements necessary to remain listed in the directory.

3. A notice of intent to suspend or revoke a license must be served on the licensee by certified mail at the location mailing address identified by the licensee on the license application submitted by the licensee to the Department.

4. A notice of intent to remove a manufacturer of tobacco products and its brand families from the directory must be served on the manufacturer by certified mail at the address identified by the manufacturer in the most recent annual certification made by the manufacturer to the Attorney General pursuant to NRS 370A.160.

5. Any evidence to demonstrate compliance offered by a licensee or a manufacturer of tobacco products within the period described in subparagraph (1) or (2) of paragraph (c) of subsection 2 must be delivered in person or by certified mail to the employee of the Department identified in the notice served on the licensee or manufacturer.

6. If a licensee or manufacturer of tobacco products has received a notice issued pursuant to subsection 1, for any subsequent alleged violation of the same statutory provision during the 2-year period immediately following the issuance of such notice, the licensee or manufacturer is not entitled to the 10-day period to demonstrate compliance described in subparagraphs (1) and (2) of paragraph (c) of subsection 2 and the Department may immediately issue a notice of hearing pursuant to NAC 370.545.

Sec. 27. NAC 370.545 is hereby amended to read as follows:

370.545 1. If a licensee or manufacturer of tobacco products does not demonstrate compliance within the 10-day period described in subparagraph (1) or (2) of paragraph (c) of subsection 2 of NAC 370.540, or if, pursuant to subsection 6 of NAC 370.540, a licensee or manufacturer of tobacco products is not entitled to the 10-day period to demonstrate compliance, the Department may issue a notice of hearing.

2. A notice of hearing issued pursuant to this section must:

- (a) State the date, time and location of the hearing, which may be held at an office of the Department or at such other place in this State as is designated in the notice;
- (b) Include a statement of the legal authority for the suspension or revocation of the license or removal of the manufacturer and its brand families from the directory, as applicable;
- (c) Identify the specific provision or provisions of chapter 370 or 370A of NRS which the Department alleges the licensee or manufacturer of tobacco products has violated;
- (d) Include a statement of the facts which support the belief of the Department that the license should be suspended or revoked or that the manufacturer and its brand families should be removed from the directory, as applicable; and
- (e) Include as attachments all documentary evidence on which the Department intends to rely to demonstrate that the licensee or manufacturer of tobacco products, as applicable, is in violation of the provision or provisions of chapter 370 or 370A of NRS identified pursuant to paragraph (c).

3. A notice of hearing issued pursuant to this section must be served on:

- (a) All parties at least ~~20 business~~ 10 days before the date of the hearing;
- (b) A licensee by certified mail at the location mailing address identified by the licensee on the license application submitted by the licensee to the Department; and
- (c) A manufacturer of tobacco products by certified mail at the address identified by the manufacturer in the most recent annual certification made by the manufacturer to the Attorney General pursuant to NRS 370A.160.

~~{4. Upon the issuance of a notice of hearing by the Department pursuant to this section, the Commission will appoint an administrative law judge to act as a hearing officer.}~~

Sec. 28. NAC 370.550 is hereby amended to read as follows:

370.550 1. Except as otherwise provided in subsection 2, a respondent must, not later than ~~{5-business}~~ 7 days before the date of the hearing set forth in the notice of hearing issued pursuant to NAC 370.545, provide to the Department a copy of each document which is reasonably available to the respondent and which the respondent reasonably believes will be used in support of ~~{his or her}~~ *the respondent's* position.

2. A respondent may supplement the documents provided pursuant to subsection 1 on or before the date of the hearing only if good cause exists to demonstrate why the supplemental documents were not provided within the time required by subsection 1.

3. A hearing officer may exclude any document not timely provided pursuant to subsection 1 or 2.

Sec. 29. NAC 370.555 is hereby amended to read as follows:

370.555 1. All motions, unless made at a hearing, must be:

(a) Made in writing; and

(b) Served on the opposing party and the hearing officer at least ~~{10-business}~~ 7 days before the date of the hearing.

2. Any response to a motion, other than a motion made at a hearing, must be:

(a) Made in writing; and

(b) Served on the opposing party and the hearing officer within ~~{7-business}~~ 5 days after receipt of the motion.

Sec. 30. NAC 370.560 is hereby amended to read as follows:

370.560 1. A hearing officer may order the parties to file briefs with the hearing officer before *or after* the hearing.

2. ~~{Any brief filed with a}~~ *A* hearing officer ~~{must be accompanied by an affidavit from the proponent showing service on all other}~~ *may consider any request by the parties {of record} to file briefs with the hearing officer before or after the hearing.*

Sec. 31. NAC 370.580 is hereby amended to read as follows:

370.580 1. At a hearing conducted pursuant to NAC 370.500 to 370.595, inclusive ~~{+}~~, *and sections 2 to 19, inclusive, of this regulation, evidence may be received in any manner ordered by the hearing officer, but the hearing will ordinarily proceed in the following order:*

(a) The Department will present witnesses and evidence and the respondent may cross-examine the witnesses in the order in which they are presented by the Department.

(b) After the Department has completed its presentation of witnesses and evidence, the respondent may present witnesses and evidence and the Department may cross-examine the witnesses in the order in which they are presented by the respondent.

(c) After the respondent has completed its presentation of witnesses and evidence, the Department may call any rebuttal witnesses and the respondent may cross-examine the witnesses.

(d) The hearing officer may question any witness, party, counsel or representative at any time.

2. After the close of the hearing, the hearing officer shall prepare written findings of fact, conclusions of law and ~~{his or her}~~ *a* decision on the issues presented at the hearing.

3. A hearing officer shall issue ~~{his or her}~~ *a* decision and serve on all parties of record a copy of the decision and the accompanying findings of fact and conclusions of law within 45 ~~{business}~~ days after the date on which the hearing concluded.

4. A decision issued by a hearing officer pursuant to this section becomes final ~~{20-business}~~ 30 days after the date of service of the decision unless a party files a timely notice of appeal pursuant to NAC 370.585.

Sec. 32. NAC 370.585 is hereby amended to read as follows:

370.585 1. A party may, within ~~{20-business}~~ 30 days after service of a decision issued by a hearing officer pursuant to NAC 370.580, file a notice of appeal with the ~~{Commission-}~~ *Department. A notice of appeal filed pursuant to this section must be served on all parties and must identify the decision from which the party appeals, the date on which the decision was issued and the basis for the appeal.*

2. ~~{A}~~ *Within 30 days after filing a* notice of appeal ~~{filed}~~ pursuant to ~~{this section must be served on all parties and}~~ *subsection 1, the appellant shall file with the Commission an opening brief. The brief* must ~~{-}~~ *be served on all parties and:*

(a) Identify the decision from which the party appeals, the date on which the decision was issued and the basis for the appeal;

(b) State with particularity each point of law or fact which, in the opinion of the appellant, the hearing officer overlooked or misconstrued;

(c) Identify the parts of the record before the hearing officer that the appellant deems relevant to the appeal; and

(d) State each argument in support of the appeal that the appellant intends to present.

3. An opposing party may, not later than ~~{15-business}~~ 30 days after service of ~~{a notice of appeal-}~~ *an opening brief*, file with the Commission ~~{a response-}~~ *an answering brief* rebutting only the issues raised in the ~~{notice of appeal. Such a response may}~~ *opening brief. The*

answering brief must include identification of the parts of the record before the hearing officer that the opposing party deems relevant to ~~this or her response.~~ *the answering brief.*

4. Upon the filing of an answering brief or the expiration of the time provided for filing such a brief, the Department will schedule an oral argument on the appeal at the next meeting of the Commission.

Sec. 33. NAC 370.590 is hereby amended to read as follows:

370.590 1. ~~Upon the filing of a response to the notice of appeal pursuant to NAC 370.585 or the expiration of the time for filing such a response, the Executive Director will schedule oral argument on the appeal at the next meeting of the Commission.~~

~~—2.~~ Oral argument before the Commission *on appeal* will be limited to ~~15~~ *20* minutes for each party ~~[-The appellant must present his or her argument first but may reserve time for rebuttal following the presentation of argument by the opposing party.] and will ordinarily proceed in the following order:~~

(a) The staff of the Department will provide a brief orientation;

(b) The appellant will present;

(c) The respondent will present; and

(d) The appellant will present a rebuttal, if the appellant has reserved time for a rebuttal.

2. The Commission will consider only evidence which was submitted to the hearing officer and identified in the ~~notice of appeal~~ *opening brief* or ~~response to the notice of appeal.~~ *answering brief.*

3. The Commission may affirm, *adopt*, reverse or modify the decision *or proposed order* of the hearing officer or remand the case to the hearing officer. The Executive Director shall, on behalf of the Commission, issue a written decision on the appeal.

4. Unless the Commission remands a case to the hearing officer, the decision of the Commission is a final decision in a contested case for the purposes of judicial review.

Sec. 34. NAC 370.595 is hereby amended to read as follows:

370.595 **1.** If a final order issued by a hearing officer or the Commission temporarily suspends or permanently revokes the license of a wholesale dealer:

~~11.1~~ **(a)** The final order must not become effective and the license of the wholesale dealer must not be suspended or revoked until 20 ~~business~~ days after the date of issuance of the final order.

~~12.1~~ **(b)** The wholesale dealer shall, within ~~15 business~~ 7 days after the date on which the final order is issued:

~~1(a)~~ **(1)** Notify each *tobacco* retail dealer that is a customer of the wholesale dealer of the revocation or suspension of the license of the wholesale dealer and the date on which the revocation or suspension becomes effective; and

~~1(b)~~ **(2)** Notify each manufacturer of tobacco products from whom the wholesale dealer purchases tobacco products of the revocation or suspension of the license of the wholesale dealer and the date on which the revocation or suspension becomes effective.

~~13.1~~ **(c)** Until the date on which the revocation or suspension of the license is effective, the wholesale dealer may continue to engage in any lawful activity otherwise authorized or permitted pursuant to chapters 370 and 370A of NRS.

2. As used in this section:

(a) “Tobacco retail dealer” has the meaning ascribed to it in NRS 370.559.

(b) “Wholesale dealer” has the meaning ascribed to:

(1) “Wholesale dealer” in NRS 370.055; and

(2) “Wholesale dealer of other tobacco products” in NRS 370.440.

Sec. 35. NAC 370.020, 370.140, 370.230, 370.240 and 370.250 are hereby repealed.

TEXT OF REPEALED SECTIONS

370.020 Application for subsidiary place of business.

1. A cigarette wholesaler may maintain a warehouse for keeping merchandise on hand at another place than the established principal place of business, by listing the subsidiary place of business with the Department.

2. Application must be made to the Department for each subsidiary location and the application must specify the location by street and number.

370.140 Wholesale dealer to notify Department of intent to sell taxable product. A wholesale dealer in products made from tobacco, other than cigarettes, shall notify the Department of his or her intention to sell such products in this State before making any sales. The notification must be given on a form provided by the Department.

370.230 Refund of precollected state tax: Procedure; rate.

1. As used in this section, unless the context otherwise requires:
- (a) “Department” means the Department of Taxation of the State of Nevada.
 - (b) “Governing body” means the governmental entity that has the authority to make decisions for a tribe, commonly known as a tribal government.
 - (c) “Month” means a calendar month.

(d) “Reservation” means an Indian reservation, Indian colony or lands set aside for the use and occupancy of a tribe.

(e) “Retail dealer” means any person, other than a wholesale dealer or a smokeshop owned by a tribe, who is located on a reservation and who offers to sell or who is engaged in selling cigarettes, other tobacco products or both of them at retail on the reservation.

(f) “Tribe” means any Indian tribe, Indian band, Indian colony or group of Indians recognized by the Federal Government as possessing a government-to-government relationship with the United States.

2. Upon application being made by a governing body which meets the requirements of this section, the Department shall refund to the governing body the tobacco taxes collected by the State on sales of tobacco to retail dealers in accordance with NRS 370.280 and 370.503.

3. A refund made pursuant to this section must be made at the tax rate less any discounts allowed for a tobacco wholesaler or importer.

4. Except as otherwise provided in subsection 6, only the governing body may apply for refunds of taxes on sales of cigarettes or other tobacco products to retail dealers. Each application for a refund must be made for all sales which occurred during not less than 1 month. The application must include:

(a) The amount of tobacco purchased by retail dealers during the month or months for which the refund is requested;

(b) The name and location of the wholesaler or importer from whom the tobacco was purchased; and

(c) The county or counties where the retail dealers are located, and the quantity of tobacco purchased by retail dealers located in each county.

5. The governing body shall maintain, and provide to the Department upon request, documentation substantiating all refunds requested. The documentation must include:

- (a) Identification of the purchasers of tobacco as retail dealers, by name and address;
- (b) For each transaction for which a refund is requested, the:
 - (1) Name and address of the retail dealer;
 - (2) Price paid;
 - (3) Quantity purchased; and
 - (4) Date of sale; and

(c) Such other information as the Department determines is reasonably necessary to document that a purchase qualifies for a refund pursuant to this section.

6. If a governing body fails to maintain the records required by this section, files a fraudulent refund request or refuses to transmit to the Department information required pursuant to this section, the Department may alter the refund procedure authorized by this section and, in lieu thereof, make direct refunds to a retail dealer who:

- (a) Is located on the reservation;
- (b) Purchases tobacco;
- (c) Pays the applicable tax imposed on the tobacco by the tribe; and
- (d) Complies with the requirements of this section that are applicable to governing bodies.

370.240 Refund of precollected state tax: Effect of provisions. NAC 370.230 does not limit state statutes regarding the sale of cigarettes or other tobacco products, including, without limitation, chapter 370 of NRS, and is not a waiver of the sovereign powers of tribes.

370.250 List of tribes eligible to purchase cigarettes with tribal tax stamps affixed and other products exempt from state tax. The Department will, as frequently as it deems

necessary, publish and distribute to all licensed cigarette wholesale dealers a list of all tribes that are eligible to purchase:

1. Cigarettes to which tribal tax stamps are affixed instead of state tax stamps; and
2. Other products made from tobacco, exempt from the tax imposed by the State on products made from tobacco.